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No. 86-1911

In The
Supreme Court of the United States
October Term, 1986

THE SCHISMATIC AND PURPORTED CASA LINDA PRESBYTERIAN CHURCH IN AMERICA, *et al.*,
Petitioners,

v.

GRACE UNION PRESBYTERY, INC., *et al.*,
Respondents.

On Writ of Certiorari to the Court of Appeals for the Fifth Supreme Judicial District of Texas

RESPONDENTS' BRIEF IN OPPOSITION TO CERTIORARI

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QUESTIONS RESTATED

The First and Fourteenth Amendments to the United States Constitution are inapplicable to this case because a constitutionally accepted method of determining church ownership of property rights has been decided by the State Courts of Texas in favor of Respondents without impermissible delving into church doctrine and polity, and such correct decision is not diminished by self-serving statements of by-laws of corporations created under state law, or alleged differences in church doctrine, not presented nor tried below, nor by a self-serving argument as to the lack of an express trust allegedly deciding such matters, such trust theory not having been presented, nor tried, nor decided in the State Courts below.

TABLE OF CONTENTS

Page

Questions Restated i

List of Authorities iv

Statement of Jurisdiction 1

Statement of the Case 2

Reasons Why the Petition Should be Denied 5

I. THE TEXAS COURT OF APPEALS DID NOT ERR. IT CORRECTLY APPLIED CONSTITUTIONAL PRINCIPLES IN FOLLOWING *JONES V. WOLF,* 443 U.S. 595 (1979), AS WELL AS PREVIOUS TEXAS DECISIONS, IN DETERMINING OWNERSHIP OF CHURCH PROPERTY WHERE THE DEED OF GRANT DID NOT DEVOTE CHURCH PROPERTY TO THE PROPAGATION OF A SPECIFIC RELIGIOUS DOCTRINE OR BELIEF, NOR WOULD IT HAVE MATTERED BECAUSE SUCH A DETERMINATION WOULD HAVE INVOLVED AN UNCONSTITUTIONAL INQUIRY INTO CHURCH DOCTRINE AND POLITY. (GERMANE TO PETITIONERS' POINT NO. I.) 5

II. THE TEXAS COURT OF APPEALS DID NOT ERR, BECAUSE IT FOLLOWED PRINCIPLES OF THE U.S. CONSTITUTION (FIRST AND FOURTEENTH AMENDMENTS) AND ALSO FOLLOWED THIS COURT'S DECISION IN *JONES V. WOLF, INFRA,* AND THE LAWS OF THE STATE OF TEXAS, AS ENUNCIATED BY THE STATE'S HIGHEST COURT, IN APPLYING A DEFERENCE RULE CONSONANT WITH ALL OF THE ABOVE. (GERMANE TO PETITIONERS' POINT NO. II.) 6

TABLE OF CONTENTS—Continued

Page

III. THE COURT OF APPEALS OF TEXAS DID NOT ERR IN NOT APPLYING A "NEUTRAL PRINCIPLES OF LAW" THEORY IN DETERMINING OWNERSHIP, POSSESSION AND USE OF CHURCH PROPERTY, WHERE THERE WAS NO QUESTION AS TO A BARE CHAIN OF TITLE, BUT ONLY AS TO THE IDENTITY OF THE TRUE CONGREGATION ENTITLED TO THE SAME AS DETERMINED BY THE HIGHEST CHURCH COURTS OF THE PRESBYTERIAN CHURCH. (GERMANE TO PETITIONERS' POINT NO. III.) 6

Argument and Authorities 7

Conclusion 17

TABLE OF AUTHORITIES

Page

Adickes v. Adkins, 214 S.W.2d 442 (1975) 14

Babcock Memorial Presbyterian Church v. The Presbytery of Baltimore of the United Presbyterian Church, 296 Md. 573, 464 A.2d 1008 (1983) 12

Barkley v. Hayes, aff'd sub nom, Shepard v. Barkley, 247 U.S. 1 (1918) 9

Bennison v. Sharp, 121 Mich.App. 705, 329 N.W. 2d 466 (1982) 12

Brown v. Clark, 116 S.W. 360 (Tex. 1909) 4, 13

Browning v. Burton, 273 S.W.2d 131 (Tex.Civ. App.—Austin, 1954) ref., n.r.e. 14

Calvary Presbyterian Church v. Presbytery of Baltimore, 39 Md.App. 405, 386 A.2d 357 (1978) 12

Church of God and Christ, Inc. v. Cawthon, 507 F.2d 599 (5th Cir., 1975) 14

Cussen v. Lynch, 254 S.W.2d 932 (Tex.Civ.App.— 1922) 13, 14

First Baptist Church of Paris v. Fort, 54 S.W. 892 (Tex. 1900) 13

Fonken v. Community Church of Kamrar, 339 N.W.2d 810 (Iowa 1983) 12, 15

Jones v. Wolf, 443 U.S. 595 (1979) 4, 5, 6, 9, 10, 11, 12

Kedroff v. Saint Nicholas Cathedral, 344 U.S. 94 (1952) 9

Kreshik v. Saint Nicholas Cathedral, 365 U.S. 190 (1960) 9

Maryland and Virginia Eldership of the Churches of God v. Sharpsburg Church of God, Inc., 396 U.S. 367 (1970) 9, 10, 13

TABLE OF AUTHORITIES—Continued

Page

Mills v. Baldwin, 377 So.2d 971 (Fla.), *cert. denied*, 446 U.S. 93 (1980) 12

Newark v. Burns, 83 N.J. 594, 417 A.2d 31 (1981) 12

Norton v. Green, 304 S.W.2d 420 (Tex.Civ.App.—Waco, 1957) ref., n.r.e. 14

Presbyterian Church v. Hull Church, 393 U.S. 440 (1969), *(Presbyterian Church I), rev'g Presbyterian Church v. Eastern Heights Church*, 224 Ga. 61, 159 S.E.2d 690 (1968) 14

Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian, 393 U.S. 440 (1969) 10

Presbytery of the Covenant v. First Presbyterian Church of Paris, 552 S.W.2d 865 (Tex.Civ.App.—Texarkana, 1977) 4, 14

Protestant Episcopal Church v. Graves, 83 N.J. 572, 417 A.2d 19 (1980); *cert. denied*, 449 U.S. 1131 (1981) 12, 15

Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976) 10, 11

Tea v. Protestant Episcopal Church, 96 Nev. 339, 610 P.2d 182 (1980) 12

Watson v. Jones, 80 U.S. (13 Wall.) 679 (1872) 8, 9, 11, 13

United States Constitution, Amendment I 6, 10, 11, 13

United States Constitution, Amendment XIV 6, 11

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STATEMENT OF JURISDICTION

Respondents believe that there is substantial doubt whether the alleged federal issue in this case was presented to and decided by the Texas state courts. Petitioners herein plead "strict chain of title" (calling it "neutral

principles") in their pleadings and briefs in the Texas appellate courts, and all of them; then, also for the first time, Petitioners here raise an alleged "departure from doctrine" theory. This new theory has absolutely no basis in the evidence below, there is no finding or holding of any court below on this new theory, and Petitioners have not heretofore raised this issue. The Texas Court of Appeals reviewed the trial court's judgment and affirmed it, all without any "departure from doctrine" argument or any argument about the property being devoted to a particular religious propagation. The Texas Supreme Court did not disturb this holding. Thus, this Court lacks jurisdiction over this case. If this Court determines that jurisdiction does exist, the petition for Writ of Certiorari should be denied, as will be shown below.

STATEMENT OF THE CASE

This is a church dispute. Petitioners herein are a dissident and schismatic faction formerly belonging to the Casa Linda Presbyterian Church in Dallas, a constituent and member church of the Presbyterian Church in the United States (PCUS), a hierarchical and connectional church, represented in part herein by its Presbytery, Grace Union Presbytery, Inc., one of (the main) Respondents herein.

The Petitioners herein, The Schismatic and Purported Casa Linda Presbyterian Church, *et al.* (hereinafter "Petitioners"), called a congregational meeting of the local church for the avowed purpose of dis-affiliating from the Presbyterian Church in the United States (PCUS). The

meeting was not attended by a majority of the members of the Casa Linda Presbyterian Church; in fact, it was not even attended by one-half (½) of the members. The meeting was not in compliance with stated church law. It was in violation of Presbytery directions and instructions. A majority of those present at that meeting (the Schismatics) voted to "withdraw" from PCUS, attempting the taking of all of the Church property, both realty and personalty, with them, and away from the Presbytery. They further sought to affiliate with the Presbyterian Church in America which had previously and officially been determined by Respondent Presbytery to be schismatic. It still is.

The Respondents herein, the loyal and continuing congregation, brought an action against the dissident faction to enjoin property disposition and for a declaratory judgment, declaring ownership of all property of the local church to continue to be in the loyal and true congregation as previously designated by PCUS, through the Presbytery. The Schismatics, having lost in the trial court, began a series of appeals including to the Court of Appeals and then to the Texas Supreme Court. Having lost at every level, (three Courts and five judgments and orders), they now seek to overturn all of the Texas Courts in this Honorable United States Supreme Court.

The facts in the Trial Court were so conclusively in favor of the Respondents, the Trial Court took the case away from the jury and decided in Respondents' favor, as embodied in the Court of Appeals opinion (please see Appendix "A" to Petitioner's brief). Further, there were 23 other findings of fact and 17 other conclusions of law

that were totally unchallenged in the proceedings below. These were all in favor of Respondents.

No amount of purported change of doctrine, which is not only unsupported but which was not offered into evidence below, will avail the Petitioners. The Courts of Texas have long held, beginning in *Brown v. Clark,* 116 S.W. 360 (Tex. 1909) and subsequent decisions thereto, concluding with *Presbytery of the Covenant v. First Presbyterian Church of Paris* case, 552 S.W.2d 865 (Tex.Civ. App.—Texarkana, 1977), deference to the higher judicatories of the church is the law of the State of Texas.

An Administrative Commission of Presbytery was specifically clothed with all powers of Presbytery to deal with this matter. Petitioners generally and specially ignored and defied each and every admonition of the Administrative Commission, and as a consequence thereof, all ministers and other elders (named Petitioners) were defrocked as officers of the Presbyterian Church and given notice of their right to appeal through the Church courts, all of which they steadfastly ignored and still ignore. The ministers have now left the local church and have gone elsewhere.

An injunction was entered by agreement allowing Petitioners to occupy the premises temporarily, but prohibiting any disposition or attempted disposition of any property. That injunction has been dissolved because of incorporation into the final judgment lodging all property and property rights in Respondents.

As shall be seen more fully, *infra,* this matter is squarely governed in the first instance by the United States Supreme Court case of *Jones v. Wolf,* 443 U.S. 595 (1979), and then, in the second instance, by state law.

Jones v. Wolf, supra, clearly and unambiguously states that there are several ways a hierarchical church dispute can be settled, including the method of deference. Because there are two (2) groups claiming to be "Casa Linda Presbyterian Church," the forefront and only question has been, "Who is Casa Linda Presbyterian Church?" Secondly, as per *Jones v. Wolf,* "What is state law?" Both have been decided by state court and the church courts in favor of Respondents.

The true and loyal Casa Linda Presbyterian Church (Respondents) is alive and well. There has been no cessation in the existence of the true church from the date of schism to the present. Once again, "Who is Casa Linda Presbyterian Church?" This question has been unanimously decided by all Courts involved—the Church Courts; the Trial Court; the Court of Appeals and the Texas Supreme Court. All have held that the true church is the Respondents herein, the Loyalists, and that church is entitled to all of the property, real and personal, of the local church.

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REASONS WHY THE PETITION SHOULD BE DENIED (COUNTERPOINTS)

COUNTERPOINT NO. I.

THE TEXAS COURT OF APPEALS DID NOT ERR. IT CORRECTLY APPLIED CONSTITUTIONAL PRINCIPLES IN FOLLOWING *JONES V. WOLF,* 443 U.S. 595 (1979), AS WELL AS PREVIOUS TEXAS DECISIONS, IN DETERMINING OWNERSHIP OF CHURCH PROPERTY WHERE THE DEED OF GRANT DID

NOT DEVOTE CHURCH PROPERTY TO THE PROPAGATION OF A SPECIFIC RELIGIOUS DOCTRINE OR BELIEF, NOR WOULD IT HAVE MATTERED BECAUSE SUCH A DETERMINATION WOULD HAVE INVOLVED AN UNCONSTITUTIONAL INQUIRY INTO CHURCH DOCTRINE AND POLITY. (GERMANE TO PETITIONERS' POINT NO. I.)

COUNTERPOINT NO. II.

THE TEXAS COURT OF APPEALS DID NOT ERR, BECAUSE IT FOLLOWED PRINCIPLES OF THE U.S. CONSTITUTION (FIRST AND FOURTEENTH AMENDMENTS) AND ALSO FOLLOWED THIS COURT'S DECISION IN *JONES V. WOLF, SUPRA*, AND THE LAWS OF THE STATE OF TEXAS, AS ENUNCIATED BY THE STATE'S HIGHEST COURT, IN APPLYING A DEFERENCE RULE CONSONANT WITH ALL OF THE ABOVE. (GERMANE TO PETITIONERS' POINT NO. II.)

COUNTERPOINT NO. III.

THE COURT OF APPEALS OF TEXAS DID NOT ERR IN NOT APPLYING A "NEUTRAL PRINCIPLES OF LAW" THEORY IN DETERMINING OWNERSHIP, POSSESSION AND USE OF CHURCH PROPERTY, WHERE THERE WAS NO QUESTION AS TO A BARE CHAIN OF TITLE, BUT ONLY AS TO THE IDENTITY OF THE TRUE CONGREGATION ENTITLED TO THE SAME AS DETERMINED BY THE HIGHEST CHURCH COURTS OF THE PRESBYTERIAN CHURCH. (GERMANE TO PETITIONERS' POINT NO. III.)

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ARGUMENT AND AUTHORITIES

The argument and authorities cited by the Schismatics in their Reason No. I for Granting the Writ are clearly argument *in extremis*. They are replete with inaccuracies and a thorough re-hashing of the "departure from doctrine" argument. If their position is so well settled in the law, why did they not raise it in the trial court or the Court of Appeals? The Schismatics first condemn the idea of any sort of trust being present, then turn around and state that there was a trust of sorts for the propagation of a certain religious belief (presumably the Schismatics' own religious belief). It is a thinly disguised attempt to raise the issue of "departure from doctrine" theory which was put to rest years ago by this Honorable United States Supreme Court. It is a theory which requires the Court to go into a searching inquiry of church doctrine, polity and practices at particular times and which seeks to have a Court supplant its ideas for those of the ruling church judicatories. It is an idea which tries to drag the Court into an ecclesiastical question which has already been settled and ruled upon by the very denomination itself. It is doubtful that this argument by the Schismatics is appropriate or timely now as there is no evidence, in any Court below that there has been a departure from doctrine. It is too late. Texas courts have decided the fact issues, and this one was not even presented. It is merely raised now belatedly and as a justification for schismatic behavior.

THE "DEFERENCE" RULE

The Supreme Court first adopted, in 1872, a rule which has become known as the "deference rule," in de-

ciding church property cases. The benchmark case was *Watson v. Jones,* 80 U.S. (13 Wall.) 679 (1872), a case involving a property dispute in the United Presbyterian Church. In *Watson v. Jones, supra,* the Supreme Court enunciated as a matter of federal common law a broad doctrine of judicial deference to the internal decision-making processes of religious denominations, based upon the denomination's polity or form of government. In framing the "deference rule" the Supreme Court distinguished between two types of religious denominations, which in later cases have been respectively described as "hierarchical" denominations and "congregational" denominations.

The Supreme Court defined a "hierarchical denomination" as one in which "the religious congregation or ecclesiastical body holding the property is but a subordinate member of some general church organization in which there are superior acclesiastical tribunals with a general and ultimate power of control more or less complete, with some supreme judicatory over the whole membership of that organization." *Watson v. Jones, supra.* The Supreme Court stated:

> "In cases of this character we are bound to look at the fact that the local congregation is itself but a member of a much larger more important religious organization, and is under its government and control, and is bound by its orders and judgments. There are in the Presbyterian system of ecclesiastical government, in regular succession, the presbytery over the session or local church, the synod over the presbytery, and the General Assembly over all. These are called in the language of the church organs, "judicatories," and they entertain appeals from the decisions of those

> below, and prescribe corrective measures in other cases.
>
> In this class of cases we think the rule of action which should govern the civil courts . . . is that, whenever the questions of discipline, or of faith, or of ecclesiastical rule, custom, or law have been decided by the highest of these church judicatories to which the matter has been carried, the legal tribunals must accept such decisions as final and as binding on them, in their application to the case before them."

Watson v. Jones at 726-27.

A "congregational" or independent church is "a religious congregation which, by the nature of its organization, is strictly independent of other ecclesiastical associations, and so far as church government is concerned, owes no fealty or obligation to any higher authority.

Subsequent Supreme Court decisions discussing the deference approach have not altered the definitions of hierarchical and congregational denominations set forth in *Watson v. Jones*, e.g., *Jones v. Wolf*, 443 U.S. 595, 619 (1979) (Powell, J., dissenting); *Maryland and Virginia Eldership of the Churches of God v. Sharpsburg Church of God, Inc.*, 396 U.S. 367 (1970) (Brennan, J., concurring); *Kedroff v. Saint Nicholas Cathedral*, 344 U.S. 94, 110 (1952).

In *Barkley v. Hayes*, 208 F.319 (D.Mo. 1913), *aff'd sub nom.*; and *Shepard v. Barkley*, 247 U.S. 1 (1918), the Supreme Court of the United States stated that the deference principles "have been so affirmatively and conclusively settled, that it is unnecessary to restate them." (See also *Kreshik v. Saint Nicholas Cathedral*, 344 U.S.

94 (1952); *Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696 (1976).

The "neutral principles" approach had first been mentioned by the Supreme Court in *The Presbyterian Church of the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U.S. 440 (1969) and *Maryland and Virginia Eldership of the Church of God v. Sharpsburg Church of God, Inc.*, 393 U.S. 367 (1970) (*per curiam*).

The Supreme Court of the United States held in *Jones v. Wolf* that states may constitutionally follow either the deference rule or the neutral principles rule. The decision did not purport to change the law of any state; rather the effect of the decision was to allow a state constitutionally to apply the neutral principles rule if that state so desires. In short, a state may follow either the deference approach or the neutral principles approach, and it unquestionably turns on what the law of any given state is.

This is clearly seen in the language of *Jones v. Wolf*:

> "Subject to these limitations, however, the First Amendment *does not dictate* that a State must follow a particular method of resolving church property disputes. Indeed, a State may adopt any one of various approaches for settling church property disputes so long as it involves no consideration of doctrinal matters, whether ritual or liturgy of worship or the tenets of faith." (Emphasis added.)

443 U.S. at 604.

Further:

> "[In the absence of fraud or collusion] the First and Fourteenth Amendments mandate that civil courts shall not disturb the decision of the highest ecclesiastical tribunal within a church of hierarchical polity, but must accept such decisions as binding on them, in their application to the religious issues of doctrine or polity before them." (Citing *Serbian Orthodox Diocese.*)

443 U.S. at 604, fn 4.

The dominant concern of the Supreme Court in *Jones v. Wolf* is clear—the courts should avoid excessive or improper entanglement in church affairs. The holding of the Court in this case is further gleaned from the following language in *Jones v. Wolf*:

> "It is also clear . . . that the First Amendment severely circumscribes the role that civil courts may play in resolving church property disputes on the basis of religious doctrine and practice. *Serbian Orthodox Diocese v. Milivojevich*, 426 U.S. 696 at 710 (1976).
>
> "As a corollary to this commandment, the Amendment requires that civil courts defer to the resolution of issues of religious doctrine or polity by the highest court of a hierarchical church organization. *Serbian Orthodox Diocese,* 426 U.S. 724-725, 96 S.Ct. 2387; cf. *Watson v. Jones,* 80 U.S. 679, 733-734, 13 Wall 679, 733-734, 20 L.Ed. 666 (1871)."

Jones v. Wolf, supra, at 3025.

Note again the real issue: *compulsory* deference. The Court stated that a State is "entitled" to use neutral principles, not required to use same.

> "We cannot agree, however, that the First Amendment *requires* the State to adopt a rule of *compulsory*

deference to religious authority in resolving church property disputes . . .''

Id. at 3026.

Respondents' contention herein that a State may use any method of resolving church disputes so long as the courts do not become involved in deciding ecclesiastical questions or questions of polity, is well supported by decisions of the courts *since Jones v. Wolf.* Since the decision in *Jones v. Wolf* in 1979, the Supreme Courts in Florida, Iowa, Nevada and New Jersey have held that the deference rule continues to be the law of those states. *Mills v. Baldwin,* 377 So.2d 971 (Fla.), *cert. denied,* 446 U.S. 983 (1980); *reinstating* 362 So.2d 2 (Fla. 1978), *vacated,* 443 U.S. 914 (1979); *Fonken v. Community Church of Kamrar,* 339 N.W.2d 810 (Iowa 1983); *Tea v. Protestant Episcopal Church,* 96 Nev. 339, 610 P.2d 182 (1980); *Protestant Episcopal Church v. Graves,* 83 N.J. 572, 417 A.2d 119 (1980), *cert. denied,* 449 U.S. 1131 (1981); *Newark v. Burns,* 83 N.J. 594, 417 A.2d 31 (1981); *Bennison v. Sharp,* 121 Mich. App. 705, 329 N.W.2d 466 (1982). In addition, the language concerning neutral principles found in *Jones v. Wolf* is fully consistent with decisions reached in states that, although they use deference, also would have ruled the same under the neutral principles approach. *Babcock Memorial Presbyterian Church v. The Presbytery of Baltimore of the United Presbyterian Church,* 296 Md. 573, 464 A.2d 1008 (1983); *Calvary Presbyterian Church v. Presbytery of Baltimore,* 39 Md.App. 406, 386 A.2d 357 (1978); *Fonken v. Community Church of Kamrar,* 339 N.W. 2d 810 (Iowa 1983).

As can clearly be seen, the various states which have considered this type of question are relying upon their

own state law. This is the reason why different jurisdictions are arriving at different methods for determination. The next pertinent question then has to be "what is the law in TEXAS?"

TEXAS LAW

The law in Texas is and has been since the late 1800's well settled with regard to church property disputes of the kind presently before this Court. The law in Texas is clear and there are no conflicting decisions.

The Texas Supreme Court, first in 1900 and again in 1908, adopted for Texas the law previously pronounced by the United States Supreme Court in *Watson v. Jones, supra,* a theory which has recently been held by the United States Supreme Court in *Maryland and Virginia Eldership of the Churches of God at Sharpsburg, Inc.,* 90 S.Ct. 449 (1970), to be a constitutionally permissible "neutral principle of law" upon which the Court should decide this case. [See also *First Baptist Church of Paris v. Fort,* 54 S.W. 892 (Tex. 1900); *Brown v. Clark,* 116 S.W. 360 (Tex. 1909).]

As has been stated previously, the civil courts are limited in their power to resolve church-related disputes. The First Amendment to the United States Constitution prohibits the exercise of any jurisdiction over purely ecclesiastical matters. *Watson v. Jones, supra.* Texas has long recognized this.

In *Cussen v. Lynch,* 254 S.W. 932 (Tex.Civ.App.—1922) ref., the Court considered a property dispute involving the Roman Catholic Church, which also is hierarchical in nature. The Court recited the settled Texas law re-

garding church property disputes involving hierarchical churches and concluded that when an ecclesiastical question has been decided by ecclesiastical tribunals, such decisions are binding on the civil courts in trial of dependent property rights.

Since *Cussen v. Lynch, supra,* Texas cases have consistently held for deference in hierarchical situations. See *Browning v. Burton,* 273 S.W.2d 131 (Tex.Civ.App.—Austin, 1984), ref., n.r.e.; *Norton v. Green,* 304 S.W.2d 42 (Tex.Civ.App.—Waco, 1957) ref., n.r.e.; *Church of God and Christ, Inc. v. Cawthon,* 507 F.2d 599 (5th Cir., 1975).

In *Presbytery of the Covenant v. First Presbyterian Church in Paris,* 552 S.W.2d 865 (Tex.Civ.App.—Texarkana, 1977) (arising out of the District Court of Lamar County), Texas appellate courts adopted the "identity" approach to resolving hierarchical disputes, stating that:

> "*In making such a determination, the civil court exercises no role in determining ecclesiastical questions. It merely settles a dispute as to identity,* which in turn necessarily settles a dispute involving property rights. *In doing so, the court applies neutral principles of law* as required by *Presbyterian ,Church v. Blue Hull Church, supra; Adickes v. Adkins, supra.*" (Emphasis added.) 522 S.W.2d at 871.

The determination of which of two factions is loyal and should be sanctioned by the church is clearly one which is left to the ecclestiastical courts to be determined under canon law, a set of laws which these Petitioners swore to uphold and obey. However once this decision has been made by the highest ecclesiastical authority, it then becomes the province of secular courts to recognize and enforce that decision, especially where, as here, one of the

two factions has become affiliated with a schismatic organization. Although dissatisfied members may withdraw their membership from the local church, and thus dissolve their affiliation with the mother church, it is apparent that such a decision under Texas law does not give them any right, or interest, which would allow them to claim the property of the church they have abandoned.

Petitioners attempt once again to make something out of "changes" proposed for the Book of Church Order after the schism. However if anything, such "changes" support the Respondents' position. As was noted in *Fonken v. Community Church of Kamrar*, 339 N.W.2d 810, 819 (1983), a case *after Jones v. Wolf:*

> "The failure of UPCUSA's General Assembly in 1930 to amend its constitution to provide for an express trust in local church property does not negate the existence, if it otherwise appears, of an implied trust. A 1980 report recites that the 1930 amendment was supported by a majority of churches that voted but failed to carry a majority of those eligible. The report also notes that the general church prevailed in civil litigation on a theory of implied trust before and after the failure of the amendment. *Nor does the 1981 action of the General Assembly in adopting such an amendment change our view.* The record shows the 1981 amendment was adopted because of uncertainty concerning the effect of *Jones v. Wolf* on the theory of implied trust. It does not affect our determination based on neutral principles that an implied trust exists as a result of UPCUSA's polity giving it determinative authority over the property of its subordinate churches." (Emphasis added.)

Id. at 819.

Further, in *Protestant Episcopal Church v. Graves*, 83 N.J. 572, 417 A.2d 19 (1980), *cert. denied*, 449 U.S. 1131

(1981), the Supreme Court of New Jersey held in favor of the Episcopal denomination under the deference rule, stating:

> "It is true that this express trust provision was not a part of the written canons when St. Stephen's decided to sever its relationship with the Diocese and the national church. *Nevertheless, it reflects established customs, practices and usages of the Protestant Episcopal Church.*"

83 N.J. at 581, 417 A.2d at 24.

In any event, the "Pastoral Letter," a binding church injunction, was present long before the schism. The "Pastoral Letter" is a church injunction which has its origins in Chapter 15 of the Book of Church Order. The Book of Church Order is a part of the Constitution of the PCUS. The "Letter" is a binding and lawful injunction issued in 1973 by the appropriate body, years before this litigation ensued. It is a document which was served upon the leaders of the schismatic group and to which they posed no objections. Their ministers swore allegiance to the form of church government, including the issuance of lawful injunctions.

The "Pastoral Letter" states plainly that the local church property is to be held by trustees for the benefit of the main denomination which established the church. It is unequivocal in its terms. Thus, Petitioners want this Honorable Court to intrude into the affairs of the church and ignore, thereby effectively nullifying, the church injunction.

This is where their "we incorporated our wrongdoing argument" comes into play. They state that because they incorporated (as do most churches in PCUS), that some-

how they are exempted out of this process. Somehow, in incorporating, they hope that it will change the rules of the game, *after* it has been played. It is an attempt to elevate form over substance.

CONCLUSION

WHEREFORE, Respondents re-urge their Motion, *supra,* to the jurisdiction of the Court, and, in the alternative, that *certiorari* be denied.

Respectfully submitted,

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